

# United States District Court

for the  
Western District of New York

United States of America

v.

Case No. 16-M-1097

David E. Rhoades

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*Defendants*

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of August 28, 2016, in the County of Niagara, in the Western District of New York, the defendant was in possession of a firearm as an unlawful user of and addict to a controlled substance, a violation of Title 18, United States Code, Section 922 (g)(3).

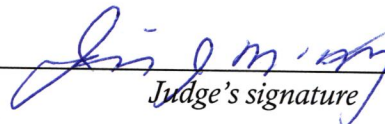
This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

  
Complainant's signature  
GABRIEL P. BUTLER  
Special Agent  
U.S. Department of Homeland Security  
Printed name and title

Sworn to before me and signed in my presence.

Date: August 29, 2016

  
Judge's signature  
HON. JEREMIAH J. MCCARTHY  
UNITED STATES MAGISTRATE JUDGE  
Printed name and title

City and State: Buffalo, New York

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT**

STATE OF NEW YORK    )  
COUNTY OF ERIE        )       SS  
CITY OF BUFFALO        )

**Gabriel P. Butler**, having been duly sworn, deposes and states as follows:

1. I am a Special Agent of the Department of Homeland Security, Homeland Security Investigations (HSI) and have been so employed since 2009. I am a graduate of the Federal Law Enforcement Training Center in Glynco, Georgia, where I was trained in, among other things, criminal investigative techniques and customs laws investigations. I have received training to enforce federal immigration and customs laws, instruction in federal law enforcement procedures, administrative law, criminal law, controlled substance investigation and investigative techniques. I am currently assigned to the Special Agent in Charge, Buffalo, New York office to investigate violations of federal law, including Title 18 and Title 22.
2. I make this affidavit in support of an application for a criminal complaint for **DAVID EDWARD RHOADES** "RHOADES" for violating Title 18, United States Code, section 922(g)(3) –unlawful possession of a firearm or ammunition by a person who is an unlawful user of or who is addicted to a controlled substance.
3. This affidavit is being submitted for the limited purpose of securing a Criminal Complaint. I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish

probable cause to believe that RHOADES did knowingly violate Title 18, United States Code, Section 922(g)(3).

**FACTS SUPPORTING PROBABLE CAUSE**

4. On August 28, 2016, I was informed by Customs and Border Protection (CBP) from the Rainbow Bridge Port of Entry in Niagara Falls, NY that RHOADES was encountered by CBP being escorted by the Canada Border Services Agency (CBSA) back into the United States. RHOADES is a native and citizen of the United States.
5. RHOADES had attempted to enter Canada at or around 1230 Hours in the company of his boss "Kevin" in order to find a place to eat lunch. During a primary interview with CBSA, RHOADES declared that he had a pistol in the vehicle he was driving. The pistol was removed by CBSA from the rear seat area, it was loaded and unsecured, laying on a blanket. RHOADES stated to CBSA that the firearm was given to him by his girlfriend (who was not present) for personal safety.
6. During a secondary search of RHOADES, his vehicle and his belongings by CBSA, a small amount of cocaine and marijuana was found within the subject's personal effects. CBSA detained RHOADES for suspected smuggling of narcotics. CBSA found the following items in RHOADES belongings:
  - i. (1) Mentos container with suspected marijuana residue
  - ii. (1) Pill bottle with suspected cocaine residue
  - iii. (1) Pipe with residue
  - iv. (1) Rubber pipe with suspected cocaine residue
  - v. (2) Rolling papers with suspected marijuana residue
  - vi. (1) Scale with suspected cocaine residue
  - vii. (1) Metal tin with suspected marijuana residue
  - viii. (1) Wooden box with suspected marijuana residue
7. CBSA found RHOADES to be inadmissible to Canada and allowed RHOADES to



return to the United States under escort and custody, where he was encountered by CBP.

8. The firearm is a Bryco Arms 9mm (serial #1445372). The firearm, its ammunition and its magazine were seized by CBSA and custody was transferred to CBP when RHOADES was returned to the United States where RHOADES stated to CBP Officers that the firearm belongs to his girlfriend, Mildred White. RHOADES told CBP Officers that he does not have a pistol permit to carry the firearm.
9. In CBP Secondary, a criminal history check was performed by CBP and it was found that RHOADES has an FBI number of 835034NB9. On September 20, 2007 RHOADES was convicted and charged under a guilty plea for Domestic Assault with Bodily Injury by the Metropolitan Nashville Police Department and received a misdemeanor conviction with a sentence of 11 months and 29 days.
10. I interviewed RHOADES in conjunction with other officers and Agents involved in this investigation. RHOADES was read his Miranda Rights, which he verbally acknowledged and waived. During the interview RHOADES stated that he works for Stone River Electric and that he travels around the United States doing electrical work at Cracker Barrel Restaurants. RHOADES told agents that he left his home state of Tennessee on or around August 25, 2016 with his boss "Kevin" to do work in West Virginia, Pennsylvania and New York. RHOADES stated that his girlfriend gave him the firearm to carry with him for protection because RHOADES intended to visit New York City while he was traveling.
11. RHOADES told Agents that he had no intention of going into Canada and that he mistakenly entered the country while looking for a place to eat lunch in Niagara Falls, NY. RHOADES stated that he declared the pistol to CBSA because he had nothing to hide and told them where it was located in the vehicle and that it was loaded.

12. RHOADES told Agents that the drug paraphernal seized by CBSA was all his and that none of it belonged to his boss "Kevin". RHOADES stated that he used the scale seized by CBSA in order to make sure he was getting the right amount of cocaine when buying from dealers.
13. RHOADES told agents that he is a current drug user and that he smokes marijuana regularly, approximately 3 to 4 times a week. RHOADES also stated that he has been using cocaine more frequently, and he used cocaine as recently as August 25, 2016 and August 27, 2016. RHOADES told Agents that he used to only use cocaine monthly but has been using it more frequently as of late due the long hours he has been working, and he uses cocaine to help him stay awake.
14. RHOADES told officers that on 08/27/2016 he traveled to New York City, New York in order to see the city and to party. RHOADES told Agents that he went to the Larry Flint Club, and while there he was offered cocaine by a dancer and he accepted it. RHOADES also attempted to buy narcotics from an unknown individual outside of the club. RHOADES stated that the individual pulled a knife on him in what he described as a "drug deal gone bad", and that RHOADES flashed his girlfriend's firearm at the dealer. RHOADES told Agents that the individual fled the area after seeing the firearm.
15. RHOADES stated to Agents that he had smoked marijuana on August 28, 2016 in the morning before he attempted to enter Canada.
16. RHOADES stated to Agents that he does not have a permit to carry a firearm in Tennessee or any other state in the United States and that he did not know that his domestic violence conviction precluded him from carrying a firearm.

CONCLUSION

17. Based upon the foregoing, your affiant respectfully submits that there is probable cause to believe that DAVID EDWARD RHOADES has violated Title 18, United States Code, Section 922(g)(3).



Gabriel P. Butler, Special Agent  
U.S. Department of Homeland Security  
Immigration and Customs Enforcement  
Homeland Security Investigations

Sworn to and subscribed to before me this  
29<sup>th</sup> day of August 2016.



HON. JEREMIAH J. MCCARTHY  
United States Magistrate Judge